

BEFORE THE

## Federal Communications Commission

WASHINGTON, D.C.

In re Applications for )

The Lutheran Church - Missouri Synod )

For Renewal of Licenses of )  
Stations KFUA/KFUA-FM )  
Clayton, Missouri )MM Docket No. 94-10  
File Nos. BR-890929VC  
BRH-890929VB

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: The Commission

**RESPONSE TO MOTION TO VACATE  
OR DELETE REPORTING CONDITIONS**

The Lutheran Church - Missouri Synod (the "Church"), by its attorneys, hereby submits its Response to the "Motion to Vacate or Delete Reporting Conditions," (the "Motion") filed with the Commission by the Missouri State Conference of Branches of the NAACP, the St. Louis Branch of the NAACP and the St. Louis County Branch of the NAACP (collectively, "the NAACP") on or about December 23, 1997.

The NAACP's Motion requests the Commission to vacate or delete the EEO reporting conditions which were imposed by the Commission in The Lutheran Church - Missouri Synod, 12 FCC Rcd 2152, 2165-66 ¶23 and 2168-69 ¶29 (1997) ("MO&O") (appealed, D.C. Cir. No. 97-1116) (oral argument scheduled January 12, 1998). The reporting conditions should never have been imposed and the Church has so argued in its appeal to the United States Court of Appeals for the District of Columbia Circuit. The Church is gratified that the NAACP now recognizes that "the Church has been successful in recruiting minorities" and has engaged in "the kind of outreach the Commission encourages." However, the NAACP's

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motion to relieve the Church from one of the MO&O's sanctions which never should have been imposed in the first place is procedurally flawed. The FCC's MO&O, in all respects that are adverse to the Church, is now before the United States Court of Appeals for the District of Columbia Circuit, where it will be argued shortly.

The United States Court of Appeals for the District of Columbia Circuit has exclusive jurisdiction to review FCC decisions granting, denying, modifying or revoking designated permits and licenses. See Section 402(b) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 402(b). The Church's licenses were granted subject, inter alia, to the imposition of the EEO reporting conditions. The Church has appealed those sanctions. The Court has clear jurisdiction over the reporting conditions. Indeed, the Court has exercised specific jurisdiction over the conditions which it stayed by Order dated November 13, 1997.<sup>1/</sup>

The NAACP's motion solicits the FCC to act on a material aspect of the pending appeal without first seeking a remand of the case. The Court has previously denied the NAACP's "Motion for Leave to File 'Emergency Motion to Remand the Record'" by Order dated August 26, 1997, and likewise denied the FCC's "Motion for Leave to File Emergency Motion for Remand of the Record" by Order dated September 30, 1997. The NAACP's pleading amounts, at best, to an attempted circumvention of two orders of the Court and, at the least, an extremely belated petition for reconsideration of the MO&O. It is well settled that the FCC lacks the authority to waive or extend the 30 day reconsideration period

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<sup>1/</sup> The NAACP cites no authority for its suggestion at p.1 of its motion that there is dual jurisdiction over the reporting conditions or that jurisdiction can be somehow bifurcated.

specified in Section 405 of the Act. See Federation of American Health Systems, 6 CR 486 (1997); Mary R. Kupris, 68 RR2d 63 (1990); Richardson Independent School District, 67 RR2d 1412 (1990).

In addition, the NAACP is no longer a party to this proceeding and thus lacks standing to file the motion. By Order dated September 30, 1997, the Court granted the NAACP's motion to dismiss its appeal (No. 97-1115) with prejudice. Since the NAACP's petition to deny was therefore disposed of and it no longer contests the MO&O as an intervenor, the NAACP lacks standing to file the instant motion. Cf. Garden State Broadcasting Ltd. Partnership v. FCC, 996 F.2d 386 (D.C. Cir. 1993).

Respectfully submitted,

THE LUTHERAN CHURCH - MISSOURI SYNOD

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## **CERTIFICATE OF SERVICE**

I, Barry H. Gottfried, do hereby certify that true and correct copies of the foregoing  
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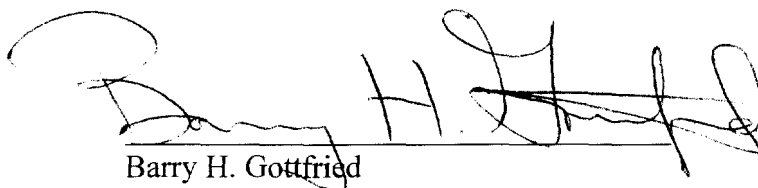
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